

PATENT
Customer No. 22,852
Attorney Docket No. 09955.0047-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Frédéric FORTIN et al.) Group Art Unit: 3755
Application No.: 10/505,469) Examiner: Woodall, Nicholas W.
Filed: August 20, 2004)
For: FLEXIBLE VERTEBRAL LINKING) Confirmation No.: 4004
DEVICE)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), Applicants bring to the attention of the Examiner the documents on the attached listing. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final action, Quayle action, or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), this Information Disclosure Statement is accompanied by a fee of \$180.00 as specified by Section 1.17(p).

Copies of the listed foreign and non-patent literature documents are attached.

Copies of the U.S. patent publications are not enclosed.

U.S. Patent No. 7,029,472 to Fortin and U.S. Patent Application No. 12/083,184, which is a National Stage entry of PCT/FR2006/002225, are commonly assigned to the Assignee of the present application.

Applicants respectfully request that the Examiner consider the listed documents and indicate that they were considered by making appropriate notations on the attached form.

The United States Court of Appeals for the Federal Circuit held in *Dayco Products, Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 U.S.P.Q.2d 1801 (Fed. Cir. 2003) that an "adverse decision" by another examiner may meet the materiality standard under the amended Rule 56, and thus, Applicants should disclose prior rejections of "substantially similar claim[s]" to the Office. Accordingly, although Applicants are not representing that the Office Actions in the co-pending applications are material to the present application and are not admitting that any of the other claims are substantially similar, out of an abundance of caution, Applicants have listed the Office Actions in co-pending Application Nos. 10/524,174 and 10/760,075 on the attached PTO/SB/08 and copies are enclosed.

The following is a concise statement of relevance of the non-English language documents.

1. DE 24 37 752 A1: This document was cited in an international search report related to U.S. Patent No. 7,029,472.

2. French Search Report and Written Opinion in Application No. FR 0510207, dated July 25, 2006: This report was issued for French Application No. FR 0510207, which is related to U.S. Patent Application No. 12/083,184.

3. French Search Report in Application No. FR 0109628, dated April 9, 2002: This report was issued for French Application No. FR 0109628, to which the present application claims priority.

4. French Search Report in Application No. FR 0210248, dated April 11,

2003: This report was issued for French Application No. FR 0210248, which is related to U.S. Patent Application No. 10/524,174.

5. French Search Report in Application No. FR 9907034, dated February 15,

2000: This report was issued for French Application No. FR 9907034, which is related to U.S. Patent No. 7,029,472.

6. Written Opinion for International Application No. PCT/FR2006/002225,

mailed April 5, 2007: An English language translation is included with the original French language document.

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicants determine that the cited documents do not constitute "prior art" under United States law, Applicants reserve the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicants further reserve the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any fee due in connection with the filing of this Statement, please charge the fee to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: September 8, 2009

By: 
Nicholas S. Stroehrer
Reg. No. 62,926
(617) 452-1647